IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

Gumni Ram v. Om Prakash & Anr.
(1)S.B.CIVIL SECOND APPEAL NO.58/2004

Gumni Ram v. Chhotu & Anr.
(2)S.B.CIVIL SECOND APPEAL NO.73/2003

Gumni Ram v. Shivji & Anr.
(3)S.B.CIVIL SECOND APPEAL NO.74/2003

Gumni Ram v. Pukhraj & Anr.
(4)S.B.CIVIL SECOND APPEAL NO.175/2002

Date of Judgment : 7th November, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. SDN Bhatt]
Mr. Kailash Joshi] for the appellant.
Mr. Manish Shishodia, for the respondent.

BY THE COURT :

Being based on common facts these second appeals are heard together and disposed of by this common judgment.

By these appeals a challenge is given by defendant appellant Gumniram to the judgment dated 27/28.8.2001 passed by learned Additional District

Judge No.2, Jodhpur in appeals No.25/99(79/99), 24/99 (80/99), 22/99 and 23/99.

The facts necessary for adjudication of present appeals are that the plaintiff respondent instituted a suit for permanent injunction before the Court of Additional Civil Judge (Junior Division), Jodhpur alleging in plaint that he was having possession over a piece of land situated in khasra No.734 village Jodhpur on or before 20.8.1981 and on that basis the competent authority under the Rajasthan Land Revenue (Allotment, Conversion & Regularisation of Agricultural Land for Residential & Commercial Purposes in Urban Areas) Rules, 1981 (hereinafter referred to as “the Rules of 1981”), by an order dated 4.6.1991 ordered to regularise his possession and also ordered to execute a lease deed in this regard. A lease was also accordingly granted to the plaintiff respondent on 10.7.1991. The order dated 4.6.1991 and the lease deed dated 10.7.1991 was ultimately declared illegal by the Revenue Appellate Authority. A challenge was given to the order passed by the Revenue Appellate Authority, Jodhpur setting aside the order dated 4.6.1991 and the lease deed dated 10.7.1991 by the plaintiff respondent by way of filing an appeal before the Board of Revenue for Rajasthan, Ajmer. During pendency of the issue with regard to rights of plaintiff respondent over the land in question the Urban Improvement Trust, Jodhpur proceeded to

dispossess him from the occupation of land in dispute. Therefore, he sought a decree for permanent injunction against Urban Improvement Trust, Jodhpur. The present appellant subsequently joined the suit as defendant No.2 as he also claimed his possession over the land in dispute.

The trial court on basis of pleadings framed seven issues to adjudicate the suit. The issue No.7 was required to be proved by the defendant appellant. Issue No.7 as framed by the trial court reads as under:-

> "आया प्रतिवादी संख्या 2 वादग्रस्त भूखण्ड पर सक्षम न्यायालय के निर्णयानुसार काबिज है ?"

The suit was dismissed by the trial court and the issue No.7 was decided in favour of the appellant defendant No.2. A challenge was give to the judgment and decree dated 14.5.1999 passed by the trial court by the plaintiff respondent by way of filing appeals before the learned District Judge, Jodhpur. The appeal so preferred ultimately came to be rejected by Additional District Judge No.2, Jodhpur by judgments dated 27/28.8.2001. Learned Additional District Judge while rejecting the appeals preferred by the plaintiff respondent also altered the finding given by the trial court with regard to issue No.7. Learned Appellate Court while deciding issue No.7 at the first instance

reached at the conclusion that the defendant No.2 has not sought any relief, therefore, the issue No.7 is absolutely unwarranted for adjudicating the suit. After giving the finding aforesaid the appellate court also adjudicated the finding given by the trial court with regard to issue No.7 on merits also and held that the defendant No.2 was not having possession over the land in question.

Being aggrieved by the same present appeals are preferred by the appellant defendant No.2.

Heard counsel for the parties and also perused the judgments impugned.

These appeals involve a substantial question of law as under:-

> "WHETHER the appellate court was right in adjudicating the issue No.7 on merits after reaching at the conclusion that the issue No.7 was absolutely unwarranted and there was no need to decide that issue for adjudication of the suit instituted by the plaintiff?"

Admit.

With the consent of parties the appeals are heard for final disposal.

It is contended by counsel for the appellant defendant No.2 that once the court reached at the conclusion that no relief was sought by the defendant No.2 and, therefore, the adjudication of issue No.7 was totally unwarranted. There was no occasion for the appellate court to deal with issue No.7 on merits.

In the present case the suit was instituted by the plaintiff respondent seeking permanent injunction against the Urban Improvement Trust, Jodhpur and the plaintiff sought a decree for permanent injunction to restrain Urban Improvement Trust, Jodhpur from removing him from possession of the land in question being occupied since on or before 20.8.1981. No relief relating to the defendant No.2 was at all sought or subject matter of the suit. As a matter of fact the issue No.7 is having no concern with the cause sought to be agitated by the suit. The appellate court on basis of the facts available on record rightly reached at the conclusion that no relief was sought by the defendant No.2, therefore, the framing and adjudication of issue No.7 was absolutely unwarranted.

The appellate court after reaching to the conclusion as above adjudicated the issue No.7 on merits. I do not find any just and valid reason for the same. Once the court reached at the conclusion that framing and adjudication of issue No.7 was

totally unwarranted, there was no occasion for the appellate court to adjudicate the issue No.7 on merits. In view of it the appellate court erred while adjudicating issue No.7 on merits.

Accordingly, these appeals are allowed. The judgments impugned dated 27/28.8.2001 passed in appeals No.25/99(79/99), 24/99(80/99), 22/99 and 23/99 are set aside to the extent of adjudication of issue No.7 on merits. The finding given by learned appellate court to the extent that framing and adjudication of issue No.7 was totally unwarranted for adjudication of the suit is maintained. However, it is open for the appellant defendant to seek declaration with regard to his possession over the land in question by way of availing appropriate remedy.

(GOVIND MATHUR),J.

kkm/ps.